

Meeting Summary

JUVENILE DELINQUENCY RULES COMMITTEE

Friday, September 19, 2014

Minnesota Judicial Center Room 225

Present:

Hon. Fred Karasov, Chair
Hon. David Lillehaug, Liaison Justice
Thomas S. Arneson
Hon. Margaret Daly
Hon. Michelle Dietrich (*by telephone*)
Susan Drabek
Megan E. Gaudette
Hon. Carol A. Hooten
Lee Kratch
Brenda Miller
Robert Sommerville
Christa Tum Cuc
Angela Walswick
Larry Pry, Assistant Supreme Court Commissioner
Karen Kampa Jaszewski, Staff Attorney
Patrick Busch, Staff Attorney

Absent:

Hon. Michele Davis
Katherine Malmanger
Richard Quigley
Victor Walker

Welcome and introductions: Chair Judge Karasov welcomed the committee members and asked them to introduce themselves. The committee members did so.

Remarks by Karen Jaszewski: Staff attorney Karen Jaszewski described the Supreme Court's May 14, 2014 order amending the juvenile delinquency rules as they affect access to delinquency records.

Remarks by Justice Lillehaug: Justice Lillehaug remarked that while the Supreme Court's rules amendments did not follow the Committee's recommendation, the Court also did not adopt in rule the statute enacted by the legislature. Rather, the Court opted to limit access to juvenile delinquency court records to only courthouse access, acknowledging the public policy issue

identified by the legislature. He also noted that the Supreme Court's amendments reflect an important constitutional separation-of-powers issue: the Supreme Court has control over the accessibility of records held by the judicial branch.

Remarks by Judge Karasov: Judge Karasov, referring to the Supreme Court's July 25, 2014 order, explained that the committee's charge is limited to determining what amendments to the juvenile delinquency rules are necessary in light of the transition to e-filing: the committee is not charged with a wholesale revision of the rules. He anticipated that the committee's discussions would focus on search warrants, charging documents, filing, and service, and that the discussions could be conducted in an informal manner.

Demonstration by Melissa Peterson: Melissa Peterson gave the committee members a demonstration of the eFS system. The committee members had a number of questions for her:

<i>Question</i>	<i>Answer</i>
Is the eFS system separate from the Odyssey system?	Yes.
How do you get to the eFS website?	Go to minnesota.tylerhost.net ; there is a link from the Judicial Branch's website.
Is training required before using the eFS system?	Training is encouraged but not required.
What is the turnaround time for acceptance of filings?	It varies.
What is the difference between file-and-serve and serve only?	With file-and-serve, a document is not served until it is accepted for filing. If the document is accepted, filing is effective as of the date and time it was transmitted to the court. Some filers may choose to file and serve documents separately; this ensures that service is effective immediately.
Is it possible to serve through eFS a filer who has not been signed up for service through the system?	No.
When you type in a juvenile case number in eFS, you see only the parties and the case type. What checks are there to ensure that the filer has chosen the correct file (sometimes the same parties will have multiple files)?	The only check is the court employee who processes the filing.

Is it possible to file a document with multiple file numbers?

Yes.

When will this become available in non-pilot counties?

The presenter was not aware of a specified rollout schedule for the non-pilot counties. She noted that the court administrators in each county would have to be prepared.

Is the public defender system currently working with eFS?

No, according to a part-time public defender the State Public Defender's Office is not set up for e-service. However, part-time (contract) public defenders may be signing up for e-service on their own.

One committee member noted that it would be helpful to have better integrations with the eFS system, because adding service contacts to individual cases is labor-intensive. It was noted that there may be some enhancements to eFS that would allow the attorney serving the document to add the attorney being served, rather than requiring attorneys to add themselves.

Demonstration of eCharging: The committee members viewed a demonstration of the eCharging system. Major discussion points included:

- eCitation equipment is not financially feasible for smaller jurisdictions.
- The State Patrol is not currently using eCharging.
- The eCharging system can send out reminders when deadlines are looming; such as when an arrestee/defendant is in custody or when documents are waiting in a work queue for more than a day. The reminders can be irritating, but do help things get done in a timely manner.
- Financial constraints continue to affect the expansion of eCharging and eCitation.
- eCitation eliminates issues with officers' handwriting being difficult to read.
- eCharging and eCitation are configured to require officers/prosecutors to fill out all required data fields before a charge is submitted. This helps reduce the rate of charges being rejected due to insufficient information, greatly improves data quality, and helps reduce the BCA's suspense file
- It's not likely that eCharging will be integrated with diversion programs.
- There need to be options for judges or prosecutors to decline to sign documents, or reject charging documents with comments. There is currently a Post-it feature that may provide some functionality in this regard.
- The eCharging system's requirements can be made more strict if the court rules are more specific.

Discussion on proposed amendments to the rules: Staff Attorney Karen Jaszewski went through the proposed amendments to the juvenile delinquency rules, which are based on SCAO's plans for eCourtMN and questions that the state court administrator's office has received from

court administrators and partner agencies. The committee members raised various points about the proposed amendments:

Rule 3: Amendments are proposed to clarify the distinction between level of offense and case type. Committee members approved the proposed changes, noting however that it should be clear that the provision governing out-of-home placements applies to all proceedings, not just delinquency proceedings. It was noted that Rule 3.04, subd. 1, regarding waiver of right to counsel, with the proposed amendment, does not apply to juvenile traffic offenses, which are governed by Rule 17. On Rule 3.08, the committee agreed after discussion that the rule should be amended to require that certificates of representation be filed “prior to appearing.”

The committee was amenable to striking references to particular methods of service from the rules, which would allow other rules or laws to govern. The committee noted the concern that service upon juveniles themselves would likely have to continue by mail or personal service.

Karen Jaszewski suggested that the comment to Rule 3 be amended to clarify the relationship between level of offense and case type. . The comment, as currently written, states that most offenses that would be misdemeanors if committed by an adult are “converted” into petty offenses. This issue needs to be clarified, especially because the level of offense affects whether the juvenile court has jurisdiction in traffic matters. The charging document should be required to designate the case type, but it cannot be used to change the level of offense. It was noted that in Hennepin County, the practice is to write “JPO” on the ticket to indicate that it is a juvenile petty offense. It was noted by Staff that the current Standard Citation includes a place for designating the case a JPO, JTR (juvenile traffic) or DEL (delinquency), and the eCitation and eCharging schema would also require this designation. This issue may require further discussion but in general the committee was in favor of clarifying the level of offense/case type relationship.

Rule 4: This rule makes the issuance of search warrants subject to the rules of criminal procedure. It was noted that the committee should ensure that this will continue to work if any changes are made to the criminal rules, which are currently being reviewed by the criminal rules advisory committee. It was also noted that the electronic search warrant process will prompt judges to note whether the focus of a warrant pertains to a juvenile.

It was noted that in rule 4.02, there should also be a reference to Rule of Criminal Procedure 33.05, which authorizes electronic and facsimile transmission. It was noted that there are more fax machines still in use in rural areas.

The proposed amendment to rule 4.03 is based upon the new penalty-of-perjury statute. No objections were raised to the proposed amendment. It was noted that similar amendments were proposed throughout the rules.

Rule 5: It was noted that the suggested change from “designated caregiver” to “standby custodian” might be outside the scope of eCourtMN; however, some amendment is needed as the current statutory reference is outdated.

It was also noted that references to “signed” documents might be revised to include electronic signatures. This issue may require further discussion.

There were no objections to the proposal to strike the portion of the comment to rule 5.05, subd. 4, that requires the court administrator to provide facsimile copies of all reports transmitted to the court.

Rule 6: There was a significant discussion over the continued use and viability of tab charges. Major points included:

- Tab charges are used more in criminal court than in juvenile court.
- Tab charges should be limited to oral amendments made on the record.
- Tab charges are occasionally needed if there is no petition ready.
- If a county attorney needs additional time to pull together probable cause, he or she could simply file a motion for an extension rather than a tab charge.
- It’s not clear why we are in a court hearing on *Riverside* proceedings, which should be handled by the judge without need of a hearing.
- There’s been no real push to keep the tab charge.

It was also noted that a “citation” now consists of data that is filed, rather than a document that is filed so the definition was expanded.

There was significant discussion over the meaning of the term “endorsed by”, which appears in Rule 6.02. Major points included:

- The purpose of the endorsement requirement is to permit screening for diversion and, in some cases, probable cause.
- It may, or may not, be appropriate to require endorsement before a document can be electronically filed.
- It may be appropriate to change the language to “reviewed for diversion eligibility” or “screened for diversion eligibility.”
- It may be appropriate to alter the rule to reflect that many prosecuting attorneys will have members of their staff review citations for diversion eligibility.
- The reference to the issuer of the charges should be deleted. Also, it’s not clear what an “attendance officer” is.

The proposed language in Rule 6.02, subd. 2, about availability of electronic filing technology is intended to reflect the fact that technological development in this area will be gradual. The comment should reflect that there will be a rollout schedule. It was also noted that the process for electronically filing conflict cases is still being developed, and that this issue may need to be revisited in the future. Additionally, it was noted that the references to “Minnesota Offense Codes” will need to be updated to recognize the elimination of these codes in the near future.

The committee agreed that it would be appropriate to strike the requirement that citations contain the race of the child. Race data is not necessary, and is not gathered in criminal court. Race census data is available for scholarly purposes, including disparate impact studies.

There was discussion over whether the following proposed sentence should be added to Rule 6.05: “For electronically filed petitions, the facts establishing probable cause must be set forth in the electronically filed petition, rather than in attachments.” Major points included:

- The proposal was motivated by a technological issue that may be resolved.
- It’s arguably more appropriate to have probable cause contained entirely within the charging document.
- Requiring facts establishing probable cause to be set out in the petition might help to minimize personal identifying data and victim data from filings.
- Some county attorneys may have difficulty with this provision.
- In criminal cases, probable cause is always set out in the complaint.
- The proposed rule creates different sets of standards for petitions and citations. However, it was noted that there has always been a basic difference between citations and petitions, and between citations and complaints in adult court as well, and that these proposed amendments do not change that difference.
- The current eCharging application doesn’t allow attachments to citations or complaints.

The committee will have further discussions on this issue. The rule as currently written is confusing. It may be necessary to research legal and constitutional issues. Judge Karasov would like the county attorney members to draft language for any proposed changes.

It was also noted that Rule 6.05 and Rule 6.02, subd. 2 might be inconsistent with each other. It’s not clear whether Rule 6.05 is intended to mean that probable cause must be contained in the charging document, which would impliedly also include citations. It was noted that Rule 6.02 provides for citations in gross misdemeanor cases. If a citation has been filed, the child may demand a petition.

There will need to be further discussions on this issue. Members should email any proposed language to Karen Jaszewski.

Meeting adjourned.

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JUVENILE DELINQUENCY RULES COMMITTEE
Friday, October 24, 2014
Minnesota Judicial Center Room 225

Present:

Hon. Fred Karasov, Chair
Thomas S. Arneson
Hon. Margaret Daly
Hon. Michele Davis
Hon. Michelle Dietrich
Susan Drabek
Megan E. Gaudette
Hon. Carol A. Hooten
Lee Kratch
Katherine Malmanger
Robert Sommerville (*by telephone*)
Christa Tum Cuc
Larry Pry, Assistant Supreme Court Commissioner
Karen Kampa Jaszewski, Staff Attorney
Aaron Zurek, Staff Attorney
Patrick Busch, Staff Attorney

Absent:

Hon. David Lillehaug, Liaison Justice
Brenda Miller
Richard Quigley
Victor Walker
Angela Walswick

Welcome and Call to Order: Chair Judge Fred Karasov welcomed the committee members and called the meeting to order.

Continued Discussion from Last Meeting: Judge Karasov introduced two points of discussion tabled from the last meeting:

Statement of Probable Cause: The committee first discussed whether to amend Rule 6.05 to require the facts establishing probable cause to be set forth in the charging document and not in police reports attached to the charging document. Major points of this discussion included:

- Setting forth the facts establishing probable cause in the petition will generally only be a challenge in cases where a juvenile is detained and the 36-hour timeline applies. In

complicated cases, it can take a considerable amount of time to extrapolate probable cause from police reports. Sometimes it is necessary for prosecutors to allege the charges generally in the petition and attach police reports to meet the 36-hour deadline.

- Attaching the police reports in those circumstances means it is now the responsibility of the judge to cull through all the reports and determine whether there is probable cause for the charges. Thus the better practice would be to include a probable cause statement in the petition. Judges prefer this charging practice as it not only saves time for judges but helps to ensure cases are fully considered and charged out appropriately.
- The practice of detention hearings varies widely across the state. In smaller counties with less support staff, a prosecutor may not have time to draft a probable cause statement.
- If a prosecutor is in a bind to meet the 36-hour deadline, he/she could charge out the petition generally and offer the reports at the detention hearing. However, this solution could potentially disadvantage defense counsel, as defense counsel will come to the hearing without adequate information and be unable to advise his/her client intelligently.
- Attaching reports to the petition complicates matters for court administration. The reports often contain nonpublic information, placing a burden on court staff to redact all nonpublic information from the documents prior to releasing the reports to the public in delinquency felony age 16 and over (D16) cases.
- The proposal to amend Rule 6.05 is one primarily motivated by technology limitations of eCharging, which does not support attachments. However, once a case is charged out, the prosecutor may supplement the charging document by eFiling the police reports through eFS.
- The only downside to requiring a probable cause statement is a logistical staffing issue for prosecutors. There are no legal barriers preventing compliance. Prosecutors in adult criminal cases have no difficulty drafting and including probable cause statements in complaints.
- In instances where a prosecutor cannot meet the 36-hour deadline he/she may request an extension or include a brief statement of the charges in the petition and supplement the record as necessary at the hearing.
- The court does not have the resources to dedicate staff to reviewing and redacting documents. Discovery is ordinarily not filed with the court; it clutters the record and often contains a substantial amount of irrelevant and nonpublic information.
- Both prosecutors and defense counsel generally have a need to review police reports – the reports may help defense counsel make an argument against probable cause. However, the reports can be exchanged between the parties without need to file them with the court.

- Minn. Stat. § 260B.141, subd. 3 requires that the petition “set forth plainly ... the facts which bring the child within the jurisdiction of the court.” The rules should conform to the statute.

CONSENSUS: After extensive discussion, it was the consensus of the committee that Rule 6.05 be amended so that it prohibits prosecutors from attaching police reports and other attachments to charging documents. The committee, however, did not support a blanket ban on the submission of police reports to supplement the record after the charging document has been filed.

Tab Charges: The committee next discussed the continued use and viability of tab charges. Major points of this discussion included:

- There is generally not a need for tab charges in juvenile court. They are used significantly more in criminal court.
- Prosecutors in small counties with minimal staff may have a continued need for tab charging – mainly in cases where a juvenile is detained and needs to be heard within the 36-hour deadline. Another member noted that a citation could be issued in lieu of a tab charge in most circumstances.
- The distinction between a tab charge and a citation is one without a difference in an electronic world so long as the court receives the charging data that it needs. There is currently no statewide electronic solution for tab charging.
- The term, “tab charge,” means different things in different counties. In some counties, a prosecutor charges via tab charge by orally stating charges on the record. In other counties, a tab charge resembles a citation or ticket.
- The tab charge as it was originally defined is obsolete. If the option is retained in the rules, smaller counties may resist once mandated to eCharge and eCite and instead issue tab charges.
- The committee should deal with this issue in one of three ways: (i) define tab charge in the rules so that it will be used consistently across the state to mean an oral amendment of the charges on the record by the prosecutor; (ii) significantly limit the use of the tab charge so that it is only an option in the most pressing circumstances; or (iii) eliminate it as a charging option altogether.
- The committee should be hesitant to eliminate the tab charge as a charging option. If the tab charge is eliminated, the rules should permit oral amendment of the petition or citation on the record.

CONSENSUS: It was the consensus of the committee that the tab charge be eliminated as a charging option in the rules. The tab charge is not used widely enough to support its continued

viability as a charging option in juvenile cases. However, the rules should permit oral amendment of the charging document on the record.

Discussion of Proposed Rule Amendments: The committee continued its discussion of the proposed amendments to the rules. Significant issues are highlighted below.

Rule 7.04: The proposed amendment strikes race from the verification requirement. The court receives race data separately through a race survey.

Rule 8.03: The proposed amendment strikes all reference to the pilot eFile/eServe order, and eliminates the reference to personal and U.S. mail service of the written plea of not guilty as option. The proposed amendments contain a separate catch-all provision that will authorize or require service through the E-Filing System where personal service is not otherwise required.

Rule 10.07: The proposed amendment eliminates the requirement that a deposition transcript be sealed in a paper envelope and modernizes the process to recognize electronic transcripts.

Rule 14.05: The committee approved inclusion of language recognizing the alternative of a statement signed under penalty of perjury to a sworn affidavit, and approved this change elsewhere throughout the rules where appropriate.

Rule 14.07: The proposed amendment eliminates the requirement that the charging document be dismissed “by order of the court” one month after expiration of the agreement suspending the proceedings. This change makes the juvenile rules consistent with the criminal rules and supports automation of the dismissal process where appropriate.

Rule 15.02: The committee proposes amendments to this and other related rules to accurately reflect how venue is transferred using the court’s electronic case management system.

Rule 15.03: The committee proposes amendments to this and other related rules that clarify the nonpublic nature of certain reports to the court, and eliminates any limitations on how or when court administration provides those reports to justice agency partners entitled to a copy.

Rule 15.05: The committee proposes amendments to conform the rule to statute.

Rule 18.04, subd. 4 & Rule 19.03, subd. 4: The committee considered proposed amendments that would require the court to provide copies of certification and EJJ studies to the prosecuting attorney and the child's counsel rather than the persons making and filing the studies. The committee discussed this proposal at length. Major points included:

- It is easier for the filer to serve the report. If the filer eFiles the report, he/she can electronically file and serve in one act without difficulty.
- Some filers (i.e. probation) feel they work for the court and that it may be improper to serve documents containing confidential information. Other partners believe that serving such documents may violate Chapter 13.
- The court should be the gatekeeper of such documents.
- Both defense counsel and the prosecutor want access to these documents as soon as possible. There may be added delay if the court is required to serve the documents.
- It is the court's vision to automate the process so that when a particular document is filed, the document will be automatically served on the required parties through integrations.
- Some court administrators would prefer to serve the documents in order to eliminate arguments over when and if the documents were served. Others would prefer that the court stay out of it entirely.
- The criminal rules require the court to serve similar documents; the juvenile rules should be consistent.
- The rules should specify a timeline for service to permit timely notice upon counsel.
- There is no remedy specified in the rules if the filer fails to timely serve; delay may require a continuance.
- If probation wants the county attorney to advocate a certain result, probation will be incentivized to serve upon the prosecutor and defense counsel, and to do so timely.
- If the rules work in practice, they should be maintained.

CONSENSUS: It was the consensus of the committee that the rules should not be amended to require that the court provide copies of certification and EJJ studies at this time.

Rule 19.11: The committee proposes striking the requirement that the probation violation report be attached to the warrant or summons. This is in recognition of the fact that the electronic imaging of documents is complicated by the attachment of confidential reports to publicly accessible warrants or summonses. The probationer is still entitled to a copy of the report under Rule 19.11, subd. 2.

Rule 20.01, subd. 3(D): The proposed amendment would require the court to provide copies of the examiner's report to the prosecuting attorney and defense counsel in recognition of the ad hoc relationship the courts have with psychological examiners, which is quite different than the more structured relationship courts have with their county probation departments.

Rule 20.02, subd. 1: The committee considered a proposal to amend the rule to require written disclosure of the mental illness defense by defense counsel "at least one (1) day before the omnibus hearing" rather than "at the omnibus hearing" to limit incidences of paper filings at court hearings. Members speculated that "one day before" the hearing may not give court administration staff enough time to review and accept the filing prior to the hearing. It was also noted that Rule 10.05 requires defense counsel to give notice of other defenses within five (5) days of the request of the prosecutor and perhaps a notice of mental illness defense should be treated similarly. It was the consensus of the committee that the proposed amendment, requiring written notice "at least one (1) day before the omnibus hearing," should not be adopted; however, the committee recognized that "at" presumes a paper notice of defense will be brought to and filed at the omnibus hearing, which should be avoided. The committee proposes the rule require notice "before" the hearing.

Rule 20.02, subd. 2: Staff asked the committee whether the rule should permit simultaneous examinations for competency under Rule 20.01, mental illness or deficiency under Rule 20.02 and civil commitment under Chapter 253B as is permitted under Minn. R. Crim. P. 20.04. The Committee agreed that simultaneous examinations should be permitted and that the language should track Minn. R. Crim. P. 20.04. A new rule 20.03 is proposed, which tracks the criminal rule.

Rule 21: The proposed amendments conform to amendments recently promulgated in the Criminal and Civil Appellate Rules, and make other needed clarifications.

Rules 25.01 and 25.03: The proposed amendments to Rules 25.01 and 25.03 are to reflect the reality that the court will not be using facsimile as a notice option and to permit notice via electronic transmission. The committee discussed this proposal at length. Some of the key points of the discussion included:

- Rule 25.01 does not specifically require the child's parents to be notified of the detention hearing but requires that defense counsel and prosecutor be notified. Parents have a right and obligation to attend under Rule 5.07, subd. 2.
- It is imperative that the parents be notified and attend the hearing. The parents are integral to the proceedings. If the child is placed at home, the parents need to be present to accept custody of the child.
- Rule 25.01, subd. 4(B), recognizes that a child's parents may be notified of the detention hearing via telephone if other methods fail. Accordingly, the rule implies that the parents are to receive notice.
- It is often faster and more effective for court administration staff to notify the child's parents of the detention hearing via telephone. In some counties, detention facilities call parents and submit written documentation to the court or detention officers provide an oral report to the court at the hearing. The rules should recognize and permit this practice. Another member commented that if this is the practice under the current rule, there is no need for amendment.
- It is unlikely that defense counsel and the prosecutor will have signed-up for service in the E-Filing System at the time of the detention hearing.

CONSENSUS: It was the consensus of the committee that Rule 25.01, subd. 4, and Rule 25.03, subd. 5(D), be amended to more clearly outline who is entitled to notice and the methods by which notice may be provided.

Rules 25.04 – 31: Staff will incorporate language finalized by the Rules of Civil Procedure and General Rules of Practice committees regarding completion of electronic service in Rule 27.02, subd. 2.

Rule 32.01 and Rule 32.02: The committee reviewed and approved proposed new Rules 32.01 and 32.02, which are intended to be catch-all provisions permitting (or requiring) eFiling and eService in accordance with Minn. Gen. R. Prac. 14 when personal service is not otherwise required.

Rule 32.03: Proposed new Rule 32.03 is intended to recognize the validity of electronic signatures. Staff noted that the judicial branch has an internal electronic signature policy governing branch signatures and a branch tool to implement the policy. The judicial branch policy, however, does not govern non-branch signatures unless specifically invoked in court rule. A committee member commented that the rules should not compel government partners to comply with an internal policy. The member proposed that new Rule 32.03 simply state: “Any signature required under these rules may be applied electronically.” It was the consensus of the committee to adopt this language.

Next Steps: The committee will likely not need to meet on November 21, 2014 and December 19, 2014. Staff Attorney Karen Jaszewski will finalize and circulate a final draft of proposed rule amendments. Committee member will have time to review the draft and offer comments via email. If comments are minimal and a third meeting is unnecessary, the November meeting will be cancelled and staff will draft and circulate a report for the committee’s review.

Adjournment: Judge Karasov thanked the committee members for their participation and attendance. There being no further business, the meeting was adjourned.